

**FILED**

**MAY 27 2014**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF BERRY PETROLEUM COMPANY, LLC, A WHOLLY OWNED SUBSIDIARY OF LINN ENERGY, LLC, AS SUCCESSOR IN INTEREST TO BERRY PETROLEUM COMPANY, FOR AN ORDER FORCE-POOLING THE INTERESTS OF ALL OWNERS REFUSING OR FAILING TO BEAR THEIR PROPORTIONATE SHARE OF THE COSTS OF DRILLING AND OPERATING THE WELLS LOCATED IN THE DRILLING AND SPACING UNITS IN THE E½ OF SECTION 5 AND ALL OF SECTION 7 IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, USM, DUCHESNE COUNTY, UTAH.

**MEMORANDUM IN SUPPORT OF  
MOTION TO STRIKE DIVISION OF  
OIL, GAS AND MINING'S HEARING  
MEMORANDUM**

**Docket No. 2014-012**

**Cause No. 272-04**

Berry Petroleum Company, LLC, a wholly owned subsidiary of LINN Energy, LLC, as successor in interest to Berry Petroleum Company ("Petitioner"), filed its Request for Agency Action ("Request") in this matter on January 10, 2014. Since that time Petitioner and the Utah Division of Oil, Gas and Mining (the "Division"), by and through their respective counsel, have had a series of discussions regarding force pooling the working interest of Burton/Hawks, Inc., an unlocatable working interest owner ("Burton"). To accommodate these discussions, Petitioner continued this matter for two one-month periods. Nonetheless, on April 17, 2014, the Division filed an untimely objection to Petitioner's Request for Agency Action and a Motion to Continue the hearing which was scheduled for April 23, 2014. In an effort to once again accommodate the Division's counsel, Petitioner agreed to continue the hearing to May and to amend its Request for Agency Action to address the Division's concerns. The matter is now set

for hearing at the Board of Oil, Gas and Mining's regularly scheduled meeting, this Wednesday, May 28, 2014.

On May 22, 2014, two business days prior to the hearing, counsel for the Division filed a pleading in this matter captioned "Hearing Memorandum." This memorandum, premised as an attempt to "explain how due process applies to opportunity-to-participate notifications" and to "provide the proper sources of law the Board should use when making a decision," sets forth, for the first time, arguments on behalf of the Division regarding the efforts necessary to satisfy due process in the context of a force pooling proceeding. The memorandum, which focuses on the Division's apparent concern over the due process rights of a defunct corporation in disregard of the rights of the participating interest owners, is an untimely and prejudicial supplemental response to Petitioner's Request for Agency Action, in direct contravention of the Board's procedural rules. The Division's disregard for the Board's procedural rules and the rights and interests of the participating interest owner should not be condoned. Petitioner respectfully requests the Board to strike the Hearing Memorandum from the record in this matter and decline to consider the issues raised therein.

### **ARGUMENT**

#### **I. The Division's Hearing Memorandum is Untimely and Prejudicial.**

The Board's rules require, in the absence of a separate motion showing good cause, that all pleadings or other materials by or from a respondent in a matter be "filed by the 10th day of the month or two weeks before the scheduled hearing, whichever is earlier, in the month in which the hearing on the matter is scheduled" in order for the issues raised therein to be considered by the Board. Utah Admin. Code R641-105-200. This rule explicitly applies to "all

statements, briefs, or memoranda prepared by the Division or by the Staff.” *Id.* The Division’s counsel filed the Hearing Memorandum on May 22, 2014, without a separate motion demonstrating good cause for the untimely filing. Accordingly, the Hearing Memorandum is untimely and should not be considered by the Board pursuant to Utah Admin. Code R641-105-200.

Even if the Division attempted to show good cause for its delinquent filing, it cannot. The Utah Supreme Court has interpreted a requirement to show good cause for an untimely filing or act as “a ‘special circumstance’ that was beyond the party’s control.” *Penta Creeks, LLC v. Olds*, 2008 UT 25, ¶ 35 (citing *Green River Canal Co. v. Olds*, 2004 UT 16, ¶ 43). No such special circumstance exists here. The issues raised and information contained in the Hearing Memorandum are not newly discovered and no conceivable reason exists why the Division could not have included them in its original Opposition to Petitioner’s Request for Agency Action or in a timely response to Petitioner’s Amended Request for Agency Action. The Hearing Memorandum is nothing more than a last ditch effort to provide supplemental support for the positions the Division has previously taken in an apparent attempt to re-frame the arguments before the Board at the hearing. This is not only insufficient to demonstrate good cause, it also prejudices Petitioner by presenting disputed factual contentions and new legal arguments two business days prior to the hearing date.

### **CONCLUSION**

For the foregoing reasons, Petitioner requests that the Board grant it's Motion to Strike the Division's Hearing Memorandum.

DATED this 27th day of May, 2014.

**BERRY PETROLEUM COMPANY, LLC**

By Mark L. Burghardt

A. John Davis

Mark L. Burghardt

HOLLAND & HART, LLP

222 South Main Street, Suite 2200

Salt Lake City, UT 84101

Telephone: (801) 799-5800

*Attorneys for Petitioner, Berry Petroleum  
Company, LLC*

**Petitioner's Address:**

Berry Petroleum Company, LLC

1999 Broadway Street, Suite 3700

Denver, CO 80202

Telephone (303) 999-4400

Attn: Terry L. Laudick, Senior Landman

### CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Motion to Strike Division's Hearing Memorandum, in the above captioned matter, to be sent, via email or U.S. Mail, this 27th day of May 2014, to the following:

United States of America  
% Bureau of Land Management  
Utah State Office  
440 West 200 South, Suite 500  
Salt lake City, Utah 84101

Michael S. Johnson, Esq.  
Assistant Attorney General  
Attorney for the Board of Oil,  
Gas and Mining  
1594 West North Temple, Suite 300  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801

United States of America  
% Ashley National Forest  
Supervisor's Office  
355 North Vernal Ave.  
Vernal, UT 84078

The estate of Mary Alice Pendleton Poindexter  
4805 Tacoma Blvd.  
Shreveport, LA 71107

Burlington Resources Oil & Gas Company, LP  
P.O. Box 51810  
Midland, TX 79710

HEP Partners LP  
500 W Illinois #100  
Midland, TX 79701

Enterprise Gas Company  
2727 N. Loop West  
Houston, TX 77210

United States of America  
Bureau of Land Management  
Vernal Field Office  
170 South 500 East  
Vernal, UT 84078

Steve Alder  
Assistant Attorney General  
Attorney for the Division of Oil,  
Gas and Mining  
1594 West North Temple, Suite 300  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801

Vintage Petroleum, Inc.  
State Federal Building  
502 S. Main, Suite 400  
Tulsa, OK 74103

Southland Energy Corp.  
1710 Fourth National Bank Building  
16 West 6th Street  
Tulsa, OK 74119

Donna A. Gillespie  
19402 West 57th Circle  
Golden, CO 80403

Burton/Hawks Inc.  
P.O. Box 359  
Casper, WY 82602

T. Keith Marks  
475 Capitol Life Center  
Denver, CO 80203

Talisman Oil & Gas Co.  
5757 Alpha Rd., Suite 920  
Dallas, TX 75240

Eagle Ridge Oil & Gas, Inc.  
8517 S. 77th E. Place  
Tulsa, OK 74133

Pinnacle Home Owner's Association  
P.O. Box 270110  
Fruitland, UT 84027

W.A. Gillespie  
10708 Zuni Drive  
Westminster, CO 80234-3161

Allen Revocable Trust, created under  
Agreement dated May 4, 2006  
1513 Aylesbury Lane  
Plano, TX 75075

Alexandra Ziesler  
alibritt@yahoo.com  
[no address provided, sent via e-mail]

Respectfully submitted this 27th day of May, 2014.

BERRY PETROLEUM COMPANY

By:



A. John Davis  
Mark L. Burghardt  
Holland & Hart LLP  
222 South Main Street, Suite 2200  
Salt Lake City, UT 84101-2001  
Telephone: (801) 799-5800